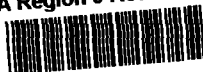


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September 30, 2002

VIA FACSIMILE

Annette Lang
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Washington, DC 20044-7611

Dear Annette:

This letter comes in response to your letter and counterproposal of September 16, 2002. Clarke's Incinerators, Inc. ("CII") continues to maintain that the government and private parties are seeking an amount in excess of CII's fair share. Nevertheless, CII believes it is in all parties' best interest to move forward toward settling the case in order to avoid significant additional legal and transactional costs. As such, CII is willing to increase its settlement proposal as outlined below.

Alleged pre-1967 disposal of unknown materials

The obvious issue with respect to alleged pre-1967 "disposal" of unknown materials remains the identification of whatever, if anything, may have been taken to the site by Mr. Clarke. CII agrees that CERCLA is broad and liberally construed in favor of the government. However, there must be some quantum of evidence available to prove that the relevant references in the Skinner Log reflect the disposal of materials that contained hazardous substances. With respect to these alleged shipments, there is no such evidence, even assuming Mrs. Skinner is accurate when she states that the entries reflect dumping. Nonetheless, in the interest of achieving settlement, CII will increase its offer for these alleged shipments to \$3,400. This represents 20% of the total you have calculated, or 40% of CII's half, as split between CII and Clarke's Services.

Alleged pre-1967 shipments of "so-called cyanide waste"

CII continues to strongly disagree with the Plaintiffs regarding the alleged

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shipments of so-called cyanide waste. First, notwithstanding the latitude courts give to the government in interpreting CERCLA, the government cannot prove the disposal of a hazardous substance simply based upon what amounts to hearsay and speculation. In this case, a witness - Mr. Wilbur - described Ford's heat treatment process in great detail, and while cyanide was clearly used as a raw material in the process, there is insufficient evidence to show that the waste "scraped" from the top of the heat treatment vessel consistently contained cyanide. Rather, the evidence shows that only one of two crust samples contained only a trace amount of cyanide. More importantly, there is no evidence of the presence of any cyanide - or any other hazardous substance - in the shipments that Mr. Clarke allegedly arranged to have sent to the Skinner site. CII agrees that, if there were additional evidence as to the presence of cyanide in the crust, and if there was actual evidence that the shipment that Ford allegedly took to Skinner by way of 2040 East Kemper Road contained cyanide waste, then perhaps no analyses of the actual material transported to Mr. Clarke's would be necessary. However, I am aware of no such evidence.

Second, CII continues to disagree regarding the admissibility of hearsay statements purporting to describe the nature of the materials disposed at the Skinner site. Although Mr. Dent's memorandum may be admissible, Mr. Oliver's statement to Mr. Dent of what an unknown person told him regarding the contents of the drums that Mr. Oliver drove to 2040 East Kemper is pure hearsay and is inadmissible in any legal proceeding. The statement meets none of the criteria of the hearsay exceptions, including the residual exception. (If you would like, I can provide you a written decision from Judge Miller in the Northern District of Indiana, in which he ruled that statements from an ex-railroad employee regarding the alleged disposal of hazardous substances, the identity of which he had learned from unidentified third parties, were inadmissible hearsay; in part his ruling rejected an argument that the statements were admissible under the residual exception to the hearsay rule). As such, Mr. Dent's statement regarding the so-called cyanide waste would carry little if any weight, even if it were somehow introduced into evidence.

Third, I did not intend to suggest that Mr. Clarke's affidavit was untruthful because he was lying to Ford. On the contrary, the affidavit and associated documents strongly suggest that Mr. Clarke generated an affidavit under significant pressure from Ford, so that, if necessary, he could somehow shoulder the blame for Ford's shipment of the so-called cyanide waste to the Skinner site. Regardless of our own interpretations, the fact remains that an infinite number of scenarios can be contrived to explain Tom Clarke's affidavit. Yet because neither Mr. Clarke nor the Ford executives who apparently strongly urged him to draft the affidavit are available to testify regarding the circumstances surrounding the affidavit, even if the affidavit is somehow admissible, it will carry little if any weight.

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In sum, based upon the legal uncertainties regarding the alleged shipments of so-called cyanide waste to the Skinner site, and based upon the lack of any credible evidence regarding any more than one actual shipment of so-called cyanide waste to the Skinner Site, CII is not willing to raise its offer as it relates to the pre-1967 shipments of so-called cyanide waste to the Skinner landfill.

1986-1987 Construction and Demolition Debris Shipments

CII continues to disagree with the Plaintiffs regarding the volume and dollar value of the shipments of construction and demolition debris to the Skinner site. First, Marty's recollection was that, regardless of what the Plaintiffs believe Mrs. Skinner charged other persons, CII paid the amounts set forth in my September 10, 2002 letter. Second, CII continues to maintain that the Skinner Log is unreliable insofar as it includes an "extra" payment that the government has attributed to CII. Nonetheless, CII is willing to increase its offer with respect to these shipments to reflect half of the disputed payment to Skinner. Assuming an additional \$1,000 paid to Mrs. Skinner and a disposal cost of \$1.33/cubic yard, CII would have disposed of 7,742 cubic yards. Based upon the disposal cost that you derived of \$24.133 per cubic yard, CII is willing to offer \$186,835 to completely pay for CII's share of costs related to disposal of construction debris at the Skinner site.

I would note that the range of payments represented by CII's last offer and the offer set forth above does not include any reduction for the evidentiary and financial hurdles inherent in proving that the construction debris sent to the Skinner site contained hazardous substances. Furthermore, these analyses contain no reduction based upon the lack of toxicity of the material, as compared to the materials that were disposed at the Site before the U.S. EPA limited Skinner's receipts to construction debris. CII in no way waives these arguments.

Limited Ability to Pay Offset

If CII and the Plaintiffs were to settle the case, CII would be amenable to limiting its payment period to two years, instead of three. However, regardless of what the government analyst believes, the settlement amounts we have been discussing still constitute a hardship on CII, especially given the factors we've discussed, such as the uncertain nature of future ownership of CII's assets, the uncertain economic conditions and their relation to CII's business, and the pending actions by U.S. EPA in relation to the real property at 2040 East Kemper Road. Nevertheless, for purposes of settlement, CII will reduce its ability to pay offset from 30% to 25%.

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Summary

In sum, CII makes the following counteroffer.

Pre-1967 payments to Skinner	\$3,400 (approximately 20% of demand)
Alleged pre-1967 shipments of so-called cyanide waste to Skinner	\$8,700 (approximate amount reflecting one half of one five-drum shipment of so-called cyanide waste)
1986-1987 shipments of construction and demolition debris	\$186,835 (7,742 cubic yards * \$24.133 per cubic yard and no reduction for toxicity or evidentiary/burden of proof issues)
Limited Ability to Pay Offset	(25% or 49,734)
Total	\$149,201

As set forth above, CII is willing to pay \$149,201 to resolve all claims pending by the government and the PRP plaintiffs arising from the alleged disposal of hazardous substances by Clarke's Incinerators, Clarke Container, and Martin Clarke at the Skinner Landfill. CII would pay this amount over a period of up to two years and Martin Clarke would be bound to make all payments if CII cannot. In return, Martin Clarke would receive a release from the government and the PRPs for any and all liability relating in any way to the Skinner site.

Please consider and respond to the foregoing offer.

Sincerely yours,

Jonathan A. Conte / SL
Jonathan A. Conte

cc: Michael O'Callaghan, Esq. (Via Facsimile)